

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Appalachian Power Company Indiana Michigan Power Company Kentucky Power Company Wheeling Power Company	)))))	Docket No. ER26-444-000
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**PROTEST, ANSWER AND MOTION FOR LEAVE TO ANSWER OF THE
INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rule 211 of the Commission’s Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”),² submits these Comments responding to the Request for Limited Waiver and Expedited Consideration filed on November 6, 2025 (“November 6th Filing”) by the American Electric Power Service Corporation (“AEP”) on behalf of its affiliates Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, and Wheeling Power Company (“AEP FRR Entities”) and PJM’s supporting comments filed on November 21, 2025 (“PJM Comments”).

Fixed Resource Requirement (“FRR”) entities are those who participate in all the PJM markets except the capacity market. FRR entities elect to meet PJM reliability requirements by paying generators full cost of service rates under traditional regulation or through

¹ 18 CFR 385.211 (2025).

² Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”) the PJM (“OA”) or the PJM Reliability Assurance Agreement (“RAA”).

bilateral contracts rather than buying and selling in the capacity market. The PJM Market Rules limit the sale of capacity from FRR entities to the PJM Capacity Market in order to prevent the subsidized generators from undermining the dynamics of the PJM Capacity Market.³ The FRR limit exists in order to prevent subsidized resources from unfairly competing with PJM market resources. The PJM Capacity Market design requires that the supply and demand balance and the resultant clearing prices work without arbitrary rule based external shocks like the addition of generation from FRR entities when prices are high. The rule has been in place from the beginning of the RPM capacity market design in order to protect the competitiveness of the PJM Capacity Market while allowing FRR entities to choose cost of service regulation while participating in all the other PJM markets.

The AEP FRR Entities' waiver request would allow the AEP FRR Entities to violate the PJM tariff rule and to undercut the working of the capacity market. The waiver would allow generators with fully guaranteed cost recovery paid for by their customers to undercut the capacity market in which investors take the risks.

The AEP FRR Entities' requested waiver notes (at 3) that the PJM region currently faces "an extreme and rapid tightening of supply and demand" for Capacity Resources in the near term and needs "additional resources . . . to rapidly address PJM's near-term reliability challenge." The AEP FRR Entities claim (at 4–5) to have already all but exhausted the entirety of their 1,300 MW capacity sales cap limit because they offered and cleared 1,237.3 MW in the 2026/2027 BRA. The AEP FRR Entities claim (at 5) to have more than sufficient capacity to satisfy their capacity obligation for all load and expected load growth in their service area with up to 750 MW of additional excess capacity that they may be able to make available to PJM by selling into the Third Incremental Auction for the 2026/2027 Delivery Year. The AEP FRR Entities claim (*id.*) that absent the Commission granting a waiver of the capacity sales

³ RAA Schedule 8.1.E.2.

cap limit, they are unable to offer this excess supply into the Third Incremental Auction for the 2026/2027 Delivery Year.

While the concern of the AEP FRR Entities for the PJM Capacity Market is laudable, that is not the reason for the requested waiver. In addition to the direct reasons for the requested waiver, the offered MW are only temporary and there is no assurance that the same MW will be offered again. There is no must offer requirement. The impact on the capacity market will be artificial, arbitrary and temporary. Any impact on the capacity market would be an inappropriate intervention that would interfere with the long term functioning of the market.

The primary result of the proposed waiver would be that the AEP FRR Entities would be able to take advantage of the high PJM Capacity Market prices.

AEP's large load addition forecast for 2026/2027 Delivery Year in 2024, was for the addition of 4,639 MW.⁴ AEP reduced that large load addition forecast for the 2026/2027 Delivery Year to 3,888 MW in 2025.⁵ The difference between the two forecasts is 751 MW. In other words, AEP over forecast large load additions by 751 MW, purchased capacity to serve that load and now wants to dump the resultant excess 750 MW in the PJM Capacity Market while asserting it is for the benefit of the market.

FRR entities choose to take on the risks of under and over forecasting and the risks associated with meeting their own load. There is a reason that the PJM tariff does not allow FRR entities to easily switch between FRR status and capacity market participant status. The

⁴ See 2024 Load Forecast Adjustments, presented at PJM Load Analysis Subcommittee, Item 04F, October 25, 2024. (Slide 5), <<https://www.pjm.com/-/media/DotCom/committees-groups/subcommittees/las/2024/20241025/20241025-item-03f---aep-large-load-request.pdf>>

⁵ See 2025 Load Forecast Adjustment, presented at PJM Load Analysis Subcommittee, Item 03F, September 16, 2025. (Slide 5). <<https://www.pjm.com/-/media/DotCom/committees-groups/subcommittees/las/2025/20250916/20250916-item-04f---aep-large-load-request.pdf>>.

election of the FRR Alternative is for a minimum term of five years.⁶ An FRR Entity may terminate its election of the FRR Alternative effective with the commencement of any delivery year following the minimum five delivery year commitment by providing written notice to PJM no later than two months prior to the Base Residual Auction for such delivery year. An FRR Entity that has terminated its election of the FRR Alternative is not eligible to re-elect the FRR Alternative for a period of five consecutive delivery years following the effective date of its termination.⁷ There is a reason that FRR entities are limited to a relatively low cap on sales into the capacity market. At the time of the rule development, some argued reasonably that the cap should be zero. The AEP FRR Entities' waiver request is an attempt to shift the risks to the PJM Capacity Market that they agreed to bear when they chose to become FRR entities.

The AEP FRR Entities proposal will also add uncertainty for other market participants to the existing uncertainty about supply and demand in the Third Incremental Auction because the AEP FRR Entities propose to offer an uncertain amount of MW between zero and 750 MW cap, subject only to their own decision.

The AEP FRR Entities cite (at 11 and 12) Market Monitor statements from 2008 and 2010 recommending elimination of the FRR sales cap. The Market Monitor statement in 2008 and the related Commission statement supported a must offer obligation for all available capacity, including any excess in an FRR plan, and without a cap. It was clear from the material cited by the AEP FRR Entities that the recommendation was to require FRR entities to offer their excess capacity into the capacity market. This is quite different from the present waiver filing that is only temporary and which is not subject to a must offer obligation. The Commission rejected the Market Monitor's position. The IMM did make this

⁶ RAA Schedule 8.1.C.1.

⁷ RAA Schedule 8.1.C.2.

recommendation in the 2010 State of the Market Report.⁸ The IMM subsequently corrected that position and did not make that recommendation in the 2011 State of the Market Report or any subsequent State of the Market Reports.⁹

PJM's comments support the requested waiver of the RAA Schedule 8.1, section E.2. PJM explains (at 3) that its support is premised on its contention that granting the waiver request will help to alleviate resource adequacy concerns for the 2026/2027 Delivery Year that could be caused by an updated load forecast or potential replacement of capacity in the Third Incremental Auction. PJM's unsupported assertions are based on speculation about what might happen in the Third Incremental Auction. PJM ignores the reasons that the limits on FRR sales into the capacity market were implemented at the time the current capacity market design was created and implemented. PJM ignores the impacts on PJM markets and the PJM Capacity Market specifically. PJM ignores the negative precedent that this waiver would create.

The Commission grants tariff waivers only in exceptional circumstances, and only when the requesting party satisfies the Commission's four part waiver test, which requires showing that: "(1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties."¹⁰

Because the request to waive the FRR sales cap fails at least three of these four elements, it should be denied.

⁸ See 2010 Annual State of the Market Report for PJM; Volume 2, Section 5: Capacity Market.

⁹ All Monitoring Analytics, LLC State of the Market Reports for PJM can be found on the Monitoring Analytics website at: <https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2025.shtml>.

¹⁰ See, e.g., *Empire Dist. Elec. Co.*, 166 FERC ¶ 61,164 (2019).

I. PROTEST

A. The “Good Faith” Element

The AEP FRR Entities reduced their large load forecast for the 2026/2027 Delivery Year at some point prior to their presentation at the PJM Load Analysis Subcommittee on September 16, 2025. It is not clear why the AEP FRR Entities waited until November 6, 2025, to file the waiver request.

B. The Requested Waiver Is Not “Limited in Scope.”

The request seeks to waive a core tariff limitation, not a minor procedural requirement. The FRR sales cap is a fundamental structural rule of the PJM Capacity Market. Waiving it even once would effectively rewrite the FRR sales cap and not remedy an issue of limited scope. The sales cap is an intentional, core component of the PJM Capacity Market and the FRR construct which is part of that market. The cap exists to constrain the amount of capacity an FRR entity can sell into the capacity market in order to limit the noncompetitive impact on the capacity market. The FRR cap on sales into the PJM Capacity Market is a deliberate market design protection. Requesting a waiver because the entity would benefit financially from selling more capacity than the limit is not limited in scope.

Granting the waiver would set a precedent that undermines the PJM market design. If the cap can be waived whenever it proves inconvenient, it ceases to serve its market discipline function, undermines incentives for market based generators, and creates uncertainty for all participants in the PJM Capacity Market. A request that would fundamentally alter market design cannot be deemed “limited in scope.”

C. The Waiver Does Not “Remedy a Concrete Problem.”

To satisfy the third prong, the party must demonstrate that the waiver directly resolves a specific, identifiable, and time sensitive problem related to tariff compliance, not merely that the waiver would produce a preferred commercial outcome.

The AEP FRR Entities identify no tariff created compliance problem. The cap on FRR sales into the capacity market is operating exactly as intended.¹¹ The alleged problem is simply that the FRR sales cap limits the AEP FRR Entities' desired commercial transactions. The request seeks competitive advantage, not problem resolution. No threat to system reliability or market functioning is demonstrated. The FRR option and the PJM Capacity Market function properly with the FRR sales cap in place.¹²

Simply having to follow [the] Tariff requirements is not a concrete problem that warrants waiver of the Tariff's requirements.

D. Granting the Waiver Would Create Undesirable Consequences and Harm Third Parties.

The Commission denies waivers that would produce adverse consequences, undue discrimination, or negative market effects. Those risks are substantial here. Allowing an FRR entity to exceed the sales cap by up to 750 MW would negatively affect all sellers in the PJM capacity market by allowing noncompetitive sellers to compete with market sellers, by creating uncertainty about the market rules when there is already significant uncertainty, by creating a negative precedent, and adding risk by failing to define the exact amount from zero MW to 750 MW that will actually be offered. Allowing one FRR entity to exceed the sales cap gives it an unfair advantage over competitors who complied with the existing tariff. This distorts market outcomes and capacity prices. The cap is designed to ensure FRR entities

¹¹ See *Erie Power, LLC*, 148 FERC ¶ 61,038 at P 20 (2014), quoted in *Midcontinent Independent System Operator, Inc., et al.*, 192 FERC ¶ 61,004 at P 21 (2025) ("Simply having to follow [the] Tariff requirements . . . is not a concrete problem that warrants waiver of the Tariff's requirements.").

¹² See 192 FERC ¶ 61,004 at P 21 ("[W]e find that the waiver request does not address a concrete problem because Filing Parties have not shown that expanding the study scope would address the problem the Filing Parties have identified."); *Oxbow Solar, LLC*, 191 FERC ¶ 61,057 at P 28 (2025) ("Given the absence of a detailed explanation in the record of how the 24-month extension will allow Oxbow Solar to secure financing and achieve commercial operation, we find that Oxbow Solar has failed to sufficiently demonstrate that its waiver request will remedy a concrete problem.").

retain sufficient capacity to meet their obligations and to prevent the subsidized generators from undermining the PJM capacity market.

Granting the waiver based solely on the preference of the AEP FRR Entities for increased short term revenues would confer special treatment without objective criteria, precisely the type of undue discrimination the Federal Power Act does not permit.¹³

For all these reasons, it fails the fourth prong.

In summary, the FRR sales cap is a central component of the PJM capacity market design, designed to protect reliability, prevent market distortion, and maintain equitable treatment among generators. A request to waive this cap is not limited in scope, does not remedy a concrete problem, and would produce undesirable consequences and harm to third parties.

II. MOTION FOR LEAVE TO ANSWER

The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answers to protests, answers, or requests for rehearing unless otherwise ordered by the decisional authority. The Commission has made exceptions, however, where an answer clarifies the issues or assists in creating a complete record.¹⁴ In this answer, the Market Monitor provides the Commission with information useful to the Commission's decision making process and which provides a more complete record. Accordingly, the Market Monitor respectfully requests that this answer be permitted.

¹³ 16 U.S.C. § 824d(b).

¹⁴ See, e.g., *PJM Interconnection, L.L.C.*, 119 FERC ¶61,318 at P 36 (2007) (accepted answer to answer that "provided information that assisted ... decision-making process"); *California Independent System Operator Corporation*, 110 FERC ¶ 61,007 (2005) (answer to answer permitted to assist Commission in decision-making process); *New Power Company v. PJM Interconnection, L.L.C.*, 98 FERC ¶ 61,208 (2002) (answer accepted to provide new factual and legal material to assist the Commission in decision-making process); *N.Y. Independent System Operator, Inc.*, 121 FERC ¶61,112 at P 4 (2007) (answer to protest accepted because it provided information that assisted the Commission in its decision-making process).

III. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this pleading as the Commission resolves the issues raised in this proceeding.

Respectfully submitted,



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Dated: November 26, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Eagleville, Pennsylvania,
this 26th day of November, 2025.



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